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Letter dated 15 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 16 December 2004 (S/2004/1005). The Counter-Terrorism Committee has received the attached fifth report from Australia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 15 February 2005 from the Permanent Representative of Australia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I am writing in response to your letter of 15 November 2004 following up Australia's fourth report to the Committee and requesting updates on implementation of a range of counter-terrorism issues. The updated information you requested is attached (see enclosure).

I would also take this opportunity to assure you of Australia's continuing support for the important work of your Committee and our commitment to maintaining a leadership position in the Asia-Pacific region in support of cooperative counter-terrorism efforts at the bilateral, regional and global levels. As a nation tragically aware of the human costs of terrorism, Australia remains a strong ally in your Committee's efforts to combat this scourge.

(*Signed*) John **Dauth**

Enclosure

Fifth report to the Counter-Terrorism Committee

Australia remains a strong supporter of international and domestic efforts to defeat terrorism. As noted in previous reports to the Committee, since the adoption of Resolution 1373, Australia has put in place extensive measures to prevent the financing of, preparations for and basing from Australia of terrorist attacks.

Australia has pleasure in responding to the request from the Counter-Terrorism Committee of the United Nations Security Council for further information on a few aspects of Australia's fourth report to the Committee regarding the implementation of Resolution 1373 (2001).

Financial Action Task Force (FATF) Revised Recommendations

The Committee sought an update on Australia's implementation of the Financial Action Task Force on Money Laundering (FATF) Revised Recommendations, in particular, Special Recommendation VIII.

Australia notes that UNSCR 1373 does not specifically require compliance with the revised FATF Forty Recommendations, or the FATF 9 Special Recommendations on Terrorist Financing. Nevertheless, Australia has fully implemented most of the Special Recommendations and partly implemented the remainder. Australia is currently reviewing its anti-money laundering/combating the financing of terrorism (AML/CFT) system with a view to implementing the Forty Recommendations and 9 Special Recommendations.

Australia is pleased to provide the Committee with an update on implementation of each of the FATF 9 Special Recommendations on Terrorist Financing.

SR I. Ratification and implementation of UN instruments

Australia ratified the UN International Convention for the Suppression of the Financing of Terrorism in 2002 and has implemented its obligations through the *Suppression of the Financing of Terrorism Act 2002* (SFT Act). This included amendments to the Criminal Code 1995 to criminalise the financing of terrorism, and amendments to the *Charter of the United Nations Act 1945* to make it an offence (punishable by up to five years imprisonment) to hold assets that are owned or controlled by terrorist organisations or individuals, or to make assets available to them. The terrorist asset freezing requirements under UNSCR 1373 and UNSCR 1267 are implemented through the *Charter of the United Nations Act 1945*.

SR II. Criminalising the financing of terrorism and associated money laundering

Under the Criminal Code 1995, it is an offence to provide, or receive funds from, a terrorist organisation. It is also an offence to provide or collect funds for a terrorist act.

Penalties range from imprisonment for 25 years to imprisonment for life. All Federal indictable offences are money laundering predicate offences.

SR III. Freezing and confiscating terrorist assets

Australia's terrorist asset freezing provisions are contained in Part 4 of the *Charter of the United Nations Act 1945*. The Act makes it an offence to deal with assets, where the asset or the owner of the asset is listed by the Minister for Foreign Affairs, or is listed by the United Nations Al-Q'aida and Taliban Sanctions Committee.

Property that is the proceeds of, or involved in, the financing of terrorism, terrorist acts or terrorist organisations can be confiscated through the *Proceeds of Crime Act 2002*.

SR IV. Reporting suspicious transaction related to terrorism

Cash dealers, as defined under section 3 of the *Financial Transaction Reports Act 1988* (FTR Act), are required to report their suspicions to AUSTRAC—Australia's financial intelligence unit—where they suspect funds are linked or related to any indictable offence, including terrorist activity. These requirements are contained within the FTR Act.

Australia is in the process of undertaking a review of AML/CFT measures with a view to extending these obligations to a broader range of entities such as lawyers and accountants.

SR V. International cooperation

Australia has extensive mutual legal assistance and information exchange mechanisms in place to provide significant assistance to another country in regard to criminal, civil and administrative investigations and proceedings relating to the financing of terrorism.

In Australia, the Director of AUSTRAC may spontaneously exchange financial intelligence with his international counterparts without the need to follow formal mutual assistance treaty procedures.

The *Mutual Assistance in Criminal Matters 1987* legislation also provides a basis for Australia's extensive network of mutual assistance treaties and arrangements which enable exchange of intelligence and evidence in criminal matters.

SR VI. Alternative remittance

In Australia, alternative remittance dealers fall within the definition of 'cash dealers' under the FTR Act, and are therefore subject to the same requirements as financial institutions, including in their reporting obligations to AUSTRAC. Australia is in the process of undertaking a review of AML/CFT measures with a view to including enhanced arrangements for those required to report under the revised legislation.

SR VII. Wire transfers

Australia has had extensive reporting of wire transfers since 1991. Under section 17B of the FTR Act, all international funds transfer instructions (IFTIs) sent into and out of the country are reported to AUSTRAC.

Australia is in the process of undertaking a review of AML/CFT measures with a view to enhancing the current IFTIs regime to address differences between the regime and Special Recommendation VII.

SR VIII. Non-profit organisations

Australian non-profit organisations are generally subject to similar registration and disclosure requirements as other legal entities and arrangements. Depending on their legal status and structure, the supervision of non-profit organisations is carried out by the Australian Securities Investment Commission, the Australian Taxation Office (ATO) or State and Territory authorities.

Non-profit organisations are required to register with the ATO for taxation purposes if they have a turnover of more than AUD 100,000 per year or if they are seeking eligibility for tax concessions or to be treated as deductible gift recipients.

The ATO undertakes a variety of auditing processes in relation to not-for-profit entities, including:

- identifying non-profit organisations that inappropriately operate outside the revenue system, such as through data matching techniques
- identifying organisations that may be inappropriately claiming concessional status as a charity
- monitoring for aggressive tax planning behaviour, including through the use of 'closely controlled' charities.

SR IX. Cash Couriers

Australian law requires all transfers of physical currency into or out of the country of AUD 10,000 or more, or the equivalent in foreign currency, to be reported to AUSTRAC. This requirement is set out in section 15 of the FTR Act.

The declaration system for passengers on an aircraft or ship required by the Act has been in operation since approximately 1990. Customs declaration cards completed by all departing and arriving passengers include a question relating to the transfer of currency. If a passenger indicates that currency equal to or greater than AUD 10,000 is being transferred, an International Currency Transfer Report (ICTR) must be completed and handed to an Australian Customs Service officer for forwarding to AUSTRAC. Customs performs intelligence-driven and random targeting of passengers to ensure that ICTRs have been lodged, where necessary, and that the reported details are correct.

UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunitions

The Committee sought an update on implementation into domestic law of the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunitions (the Firearms Protocol).

Australia is currently taking steps to ratify the Firearms Protocol. Under Australia's federal system of government, the States and Territories control and regulate many aspects of firearms, their parts and ammunition. The Australian Government is in the process of consulting with the States and Territories about implementation of the Protocol.

Specific activities being undertaken to bring Australia into line with our obligations under the Protocol include:

- reviewing the regulation of firearm manufacturers in Australia;
- conducting a scoping study into the development of a national firearms management system to improve firearm record keeping and tracing arrangements across all Australian jurisdictions; and
- investigating possibilities for the marking of firearms at import.

The Convention for the Marking of Plastic Explosives for the Purpose of Detection (MARPLEX)

The Committee has sought an update on whether Australia has decided to become a signatory to the Convention on the Marking of Plastic Explosives for the Purpose of Detection (MARPLEX Convention).

Australia is pleased to advise the Committee that it is taking steps, as a matter of priority, to accede to the MARPLEX Convention. During the 2004 Federal Government elections, the Government made a commitment to sign and implement MARPLEX.

Regional Assistance

The Committee regularly seeks information from Australia regarding our provision of assistance to other States in relation to the implementation of UNSC 1373.

Australia recently provided an update of our bilateral counter-terrorism assistance activities for inclusion in the CTC's Assistance Matrix.